

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned)	CG Docket No. 13-24
Telephone Service)	
)	
Telecommunications Relay Services and)	
Speech-to-Speech Services for Individuals)	CG Docket No. 03-123
with Hearing and Speech Disabilities)	

REPLY COMMENTS OF SPRINT CORPORATION

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) hereby submits reply comments on the Federal Communications Commission’s (“Commission’s” or “FCC’s”) Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

The initial comments make clear that many of the Commission’s proposals for Internet Protocol Captioned Telephone Service (“IP CTS”) reform are ill-advised and unnecessary. As parties correctly indicate, the Commission must be mindful of the D.C. Circuit’s recent admonition against adopting rules in an effort to “defeat a bogeyman whose existence was never verified, *i.e.*, the fraudulent use of IP CTS technology.”² Rather than repeat its previous mistake, the Commission should only adopt further reforms to address misuse of the service if such abuse

¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 18-79 (rel. June 8, 2018) (“Further Notice”).

² *Sorenson Communication, Inc. v. FCC*, 755 F.3d 702, 710 (D.C. Cir. 2014); *see also* CaptionCall Comments at 2; Hamilton Relay Comments at 16. (Unless otherwise noted, all comments cited herein were filed in CG Docket No. 13-24 in September 2018.)

is “substantiated by empirical evidence rather than anecdotal references to certain incidents.”³

The record, however, fails to establish systemic abuse. To the contrary, the record evidence demonstrates that the growth in IP CTS use is the natural (and legitimate) result of an aging population.

Given this reality, the Commission’s choice to abandon the successful Multistate Average Rate Structure (“MARS”) methodology is particularly misguided. While the Commission appears determined to move to a so-called “cost-based” rate methodology, the record establishes that this type of methodology would undermine consumer choice and innovation. Should the Commission nevertheless move forward with a “cost-based” methodology, it must ensure that all providers are reimbursed for legitimate costs of providing IP CTS service, including costs incurred to underwrite both outreach and marketing efforts. Further, the Commission should reject proposals for a unitary cost-based rate structure and instead adopt a tiered rate structure.

The Commission also should reject its burdensome user eligibility proposals, which plainly are unnecessary given the successful assessment system that is in place today. If the Commission believes misuse of the service to be a risk, it would be better served to begin by enforcing its existing safeguards against waste, fraud, and abuse instead of placing unwarranted roadblocks on the path to functional equivalence.

II. THE RECORD ESTABLISHES THAT THE GROWTH IN IP CTS DOES NOT STEM FROM WASTE, FRAUD, OR ABUSE

As Sprint noted in its initial comments, the Commission’s proposals are based on the mistaken premise that the increased demand for IP CTS is the result of waste, fraud, and abuse.⁴ The initial comments demonstrate that there simply is no systemic fraud in the IP CTS program.

³ Hamilton Relay Comments at 17.

⁴ Sprint Comments at 5-8.

As CaptionCall correctly indicates, the Commission “has had an open proceeding for five years to develop a record of waste, fraud, and abuse in the IP CTS program.”⁵ Despite this lengthy proceeding, however, there is “little or no record evidence of waste, fraud, or abuse in this program.”⁶ Moreover, the Commission has “performed numerous audits” of providers during this period.⁷ The fact that the Commission cites to no fraud-related enforcement actions following these audits is telling, plainly suggesting that providers already are effectively combatting misuse.

Instead of fraud, the record clearly establishes that IP CTS demand has increased because more individuals are experiencing hearing loss. As Hamilton notes, there have been “recognizable demographic shifts related to an aging population” that experiences hearing loss more frequently than other demographic groups.⁸ In turn, because “the growing population of people who are aging into hearing loss have never before had to learn American Sign Language, VRS is not a substitute” for IP CTS.⁹ Notably, the Commission itself indicates that between 40 and 48 million Americans currently suffer from hearing loss, and CaptionCall estimates that “less than one percent of the 40-48 million Americans with hearing loss is currently using IP

⁵ CaptionCall Comments at 2.

⁶ *Id.* at 19 (citing numerous submissions over the past five years that undercut the Commission’s stated concerns); *see also id.* at 21 (“the last five years of experience suggest that the baseline assumption that there is systemic fraud or abuse lacks any foundation in the record”); *id.* at 20 (noting that “over 90 percent of CaptionCall’s users have at least one hearing aid and/or cochlear implant”); Hamilton Relay Comments at 16 (“[T]he Commission has not produced any evidence suggesting there is any fraud to deter in the IP CTS industry. Nor is there any evidence of IP CTS abuse by either providers generally or end users.”); International Hearing Society Comments at 4 (“IHS is not aware of unethical practices or abuse within the process, and any instances of which the FCC is aware [are] undoubtedly the exception rather than the norm.”).

⁷ Hamilton Relay Comments at 18.

⁸ *Id.* at 16 (“[T]he over-65 population increased by 17.5% between 2008 and 2016.”).

⁹ CaptionCall Comments at 17.

CTS.”¹⁰ Far from establishing abuse, these facts suggest that hard-of-hearing individuals actually “remain[] an underserved community.”¹¹

In addition to the demographic changes that are taking place in the United States, the record also establishes that other factors are contributing to the increased demand for IP CTS, none of which have any relationship to fraud or abuse. For example, CaptionCall correctly recognizes that “screening for and diagnosis of hearing loss are becoming more common,”¹² which “may be partly attributable to reduced stigma concerning hearing loss and the use of hearing aids.”¹³ Similarly, the International Hearing Society indicates:

It is our members’ observation that more people in need are learning about and utilizing this life-changing service. This is a good thing. Improved connectivity to family and loved ones improves one’s quality of life, and for deaf or hard of hearing persons, can minimize the risk of becoming isolated and disengaged, which can contribute to depression, cognitive decline, and other emotional and psychological issues.¹⁴

Indeed, it is antithetical to the Commission’s statutory charge in Title IV of the Americans with Disabilities Act (“ADA”) to stifle this legitimate growth in IP CTS use.¹⁵

¹⁰ *Id.* at 18.

¹¹ *Id.*; *see also* Hamilton Relay Comments at 16-17 (“These figures show that the growth in IP CTS is much more likely due to the increasing pool of legitimate users and not to misuse of the service.”).

¹² CaptionCall Comments at 17.

¹³ *Id.* at 18.

¹⁴ International Hearing Society Comments at 1; *see also* American Speech-Language-Hearing Association Comments at 2 (“Although significant increases in utilization have occurred, ASHA notes that this growth is due in part to the increased incidence and prevalence of hearing loss and impairment, as well as the effects of fair and valid dissemination of information to individuals with a need for IP CTS.”).

¹⁵ Title IV of ADA states that the Commission “shall ensure that regulations prescribed to implement this section ... do not discourage or impair the development of improved technology.” 47 U.S.C. § 225(d)(2).

III. THE COMMISSION MUST ADOPT A RATEMAKING METHODOLOGY THAT GIVES IP CTS PROVIDERS A REASONABLE OPPORTUNITY TO RECOVER THE COSTS THEY INCUR

For the reasons set forth in its initial comments, Sprint believes that the Commission's plan to adopt a "cost-based" methodology for setting IP CTS compensation rates is ill-considered and contrary to the interests of hearing-impaired consumers. If the Commission nevertheless decides to pursue that strategy, it must ensure that the ratemaking mechanism takes into account all of the reasonable and legitimate costs IP CTS providers incur.

A. A MARS Methodology Would Be Superior to a Cost-Based Methodology

In its initial comments, Sprint urged the Commission to reinstate the use of the MARS methodology to determine the compensation level for IP CTS.¹⁶ The MARS approach remains the only ratemaking methodology that relies on the dynamics of a competitive marketplace to set compensation. As a result, MARS eliminates the need for regulatory authorities to collect and evaluate extensive cost information in order to prescribe IP CTS rates, a process that the Commission has described as "at best, an imperfect substitute for market forces."¹⁷ The MARS approach also adjusts automatically to marketplace changes that affect a provider's cost of offering IP CTS, such as changes in technology and labor costs.¹⁸ No other methodology can offer these advantages.

¹⁶ See Sprint Comments at 8-10; Hamilton Relay Comments at n. 2 and 3; *see also* Petition for Reconsideration of Sprint Corporation, CG Docket Nos. 13-24 and 03-123 (July 9, 2018).

¹⁷ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, Order, 12 FCC Rcd 15982, ¶ 289 (1997).

¹⁸ Those changes, cost reductions as well as increases, are reflected in the bids subsequently submitted by IP CTS providers.

Nevertheless, some parties insist that the Commission should adopt some form of a “cost-based” methodology to set IP CTS rates.¹⁹ As Sprint and other parties noted in their comments, the Commission should reject these ratemaking mechanisms because they would harm both IP CTS consumers and providers, undermining innovation and the other benefits that flow from competition.²⁰ Experience has shown that use of this approach invariably leads to the exclusion of legitimate costs that are incurred in providing service from the compensation rate. For example, when the Commission changed the methodology for setting the IP Relay base rate to an “allowable cost” calculation,²¹ the resulting rate was so low that all of the firms offering IP Relay service except Sprint exited the market.

Ironically, adoption of a “cost-based” mechanism also would reduce a provider’s incentive to control costs. As Hamilton Relay notes, “[l]inking reimbursement to costs disincentivizes providers from engaging in costly research and development in order to reduce costs, even in the face of multi-year rates.”²² Thus, even if the methodology accurately captured all of the costs reasonably incurred in providing IP CTS, it would create incentives that are exactly the opposite of the pro-efficiency incentives a sensible ratemaking mechanism should foster.

¹⁹ See, e.g., Telecommunications Equipment Distribution Program Association Comments at 1 (“TEDPA Comments”); National Association of Regulatory Utility Commissioners Comments at 17-18.

²⁰ See, e.g., Sprint Comments at 11-15; Hamilton Relay Comments at 11-13.

²¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service*, Order, 28 FCC Rcd 9219, ¶¶ 10-20 (2013).

²² Hamilton Relay Comments at 12.

B. Should the Commission Proceed with a Cost-Based Methodology, It Must Establish Safeguards to Ensure that Providers Are Appropriately Reimbursed

If the Commission nonetheless elects to adopt a cost-based methodology in setting IP CTS compensation, it must ensure that the ratemaking mechanism properly provides for the recovery of all reasonable, legitimate costs that are incurred in offering that service.²³ Only by doing so can the Commission fulfill its statutory obligation to ensure that “functionally equivalent” IP CTS is “available, to the extent possible . . . to hearing-impaired . . . individuals in the United States.”²⁴

Toward that end, Sprint agrees with Hamilton that the Commission’s Part 32 Uniform System of Accounts provides a useful starting point for identifying allowable costs.²⁵ As Hamilton explained, there are several categories of costs that are expressly included in Part 32 that the Telecommunications Relay Service (“TRS”) Fund Administrator has consistently and wrongly excluded in setting TRS rates, including indirect overhead costs, certain research and development costs, relay hardware and software expenses, and income taxes.²⁶ The Commission should ensure that all costs that are included in Part 32 are compensable in the provision of IP CTS.

In addition, the Commission should compensate IP CTS providers for the costs of both “outreach” and “marketing.” As Sprint explained in its comments, a significant segment of IP CTS users consists of consumers who are experiencing hearing loss for the first time and are

²³ See Sprint Comments at 18-20; Hamilton Relay Comments at 13.

²⁴ 47 U.S.C. §§ 225(a)(3), (b)(1).

²⁵ Hamilton Relay Comments at 13-15; see 47 C.F.R. Part 32.

²⁶ Hamilton Relay Comments at 14-15.

unfamiliar with the TRS program and its various offerings.²⁷ As a result, traditional TRS outreach programs must be augmented with national print and media marketing efforts that are more likely to connect with the growing number of hearing-impaired consumers who have no experience with the TRS program. The Consumer Groups similarly stressed that “[a]s long as there are people who would benefit from IP CTS whose needs are unmet because they have not heard of the service, the Commission has an obligation under Section 225 to reach those people.”²⁸ Commenters that argue that outreach and marketing should be limited to efforts that are designed to promote TRS as a whole ignore the fact that such a limitation will almost certainly ensure that many of the most likely IP CTS users will remain unaware of the service and its ability to meet their needs.²⁹

Finally, the Commission should make a tiered rate structure part of any “cost-based” ratemaking methodology that it may adopt.³⁰ As ClearCaptions observes, “a tiered rate structure approximates the IP CTS market realities more accurately” because it takes into account the fact that some IP CTS providers enjoy scale economies that providers with lower market shares do not.³¹ Thus, a tiered rate structure can enable higher-cost providers to continue to invest in newer technologies that over time can reduce their cost of service. Such innovation simply

²⁷ Sprint Comments at 19.

²⁸ Hearing Loss Association of America; Telecommunications for the Deaf and Hard of Hearing; National Association of the Deaf; Association of Late-Deafened Adults; Cerebral Palsy and Deaf Organization; American Association of the Deaf-Blind; Deaf Seniors of America; California Coalition of Agencies Serving the Deaf and Hard of Hearing; Deaf and Hard of Hearing Consumer Advocacy Network; Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center; Rehabilitation Engineering Research Center of Universal Interface & Information Technology Access Comments at 29 (“Consumer Groups’ Comments”).

²⁹ *See, e.g.*, Kansas Corporation Commission Comments at 10.

³⁰ Sprint Comments at 16-17.

³¹ ClearCaptions Comments at 11-18; *see also* Innocaption Comments at 3-4.

would not be possible if the compensation rate were based on the costs of providers that handle far greater volume of IP CTS minutes. In contrast, the unitary rate proposals favored by Hamilton and CaptionCall do not take these significant differences into account.³² Consequently, if adopted, these methodologies would create a substantial risk that the Commission would witness a reprise of what occurred when it adopted a new ratemaking methodology for IP Relay services. An approach that leads to an exodus of IP CTS providers from the marketplace does not serve the interests of consumers or the public interest goals of the enabling TRS statute.

IV. THE COMMISSION’S PROPOSED REFORMS WOULD IMPOSE SIGNIFICANT BURDENS ON THE VULNERABLE USER POPULATION

In order to meet its obligations pursuant to the ADA, the Commission must “be careful to avoid reforms that make IP CTS less available to—or more difficult to access by—individuals who need it.”³³ The initial comments make clear that a number of the Commission’s proposals would do just that, unnecessarily increasing the burdens placed on the vulnerable IP CTS user population. To avoid this result, the Commission should reject its proposals to: (1) permit only state entities to certify IP CTS user eligibility; (2) narrow user assessments to focus on specific criteria; (3) require biennial user self-certifications; and (4) mandate that providers inform users of the costs of IP CTS calls.

³² See CaptionCall Comments at 59 *et seq.*; Hamilton Relay Comments at 3-6.

³³ CaptionCall Comments at 3.

A. The Commission Should Not Permit Only State Entities to Undertake User Eligibility Assessments

While states should be permitted to find that individuals are eligible to receive IP CTS, states should not be solely responsible for assessing user eligibility.³⁴ Making states responsible for assessing user eligibility would make it exponentially more difficult for individuals to obtain IP CTS service. Among other impediments, state-level responsibility would require many potential users to travel longer distances for assessment. In turn, “since many potential users are elderly and may also have mobility or other disabilities, imposing additional requirements . . . will have a profound chilling effect on legitimate IP CTS use.”³⁵

Shifting the sole responsibility for user certification to the states also would result in a patchwork of eligibility thresholds wherein an IP CTS user who moves from one state to another may suddenly become ineligible to receive service and/or require recertification in their new state.³⁶ In addition, it is far from clear that moving the user eligibility process to the states will

³⁴ As Teltex notes, the states also “should have the same discretion in IP CTS equipment as they currently possess in reference to traditional equipment distribution.” Teltex Comments at 3. As with user assessments, however, the states should not be *solely* responsible for distributing IP CTS equipment.

³⁵ Consumer Groups’ Comments at 10-11; *see also* CaptionCall Comments at 45-46 (“Asking [the IP CTS user population] to travel more than short distances, to spend hours away from work, or to attend multiple visits, may be tantamount to denying them access to a life-changing service, especially in more sparsely populated states.”).

³⁶ *See, e.g.*, Consumer Groups’ Comments at 14 (“opening the door for states to establish different eligibility assessments would be burdensome for consumers that move between states”); *id.* at 15 (“[T]he resulting array of disparate eligibility standards across states would mean that consumers who move to a different state would face a new set of burdensome eligibility requirements and must re-establish eligibility anew each time.”). *Cf.* Florida Telecommunications Relay Comments at 2 (“Each state EDP has their own eligibility criteria based on specific rules and should not be required to modify their existing eligibility criteria.”).

result in any savings to the TRS Fund,³⁷ particularly given the large number of states that assert the need for additional funding.³⁸

Moreover, the record reflects that this burdensome and costly proposal is a solution in search of a problem given that hearing health professionals (“HHPs”) ably and efficiently perform the assessment function today.³⁹ Contrary to the Commission’s stated concerns,⁴⁰ the American Speech-Language-Hearing Association (“ASHA”) indicates that “there are no mechanisms in place to incentivize audiologists or other certifying providers to recommend IP

³⁷ See, e.g., CaptionCall Comments at 4 (“The costs of devolution would dramatically outweigh any marginal benefits from having states, rather than the Commission, oversee the IP CTS program.”); *id.* at 40-41 (noting the need for “significant state investment before states could begin certifying IP-based TRS” and finding that the FCC’s projected cost of \$9 million per year “is likely *substantially* under-stated”).

³⁸ See, e.g., Illinois Telecommunications Access Corporation Comments at 8-9 (posing questions about “how the Commission would reimburse state TEDPs for [their] additional expenses”); Missouri Assistive Technology Comments at 7 (“It would be beneficial to provide some compensation for demonstration of the IPCTS equipment assessment.”); Colorado Public Utilities Commission Comments at 8 (“states cannot handle this function without additional resources, including funding to establish additional equipment centers throughout the state and more trained professionals to assess potential IP CTS users”); National Association of Regulatory Utility Commissioners Comments at 19 (“it is not clear that States can handle [the assessment] function without additional resources, including funding to establish additional equipment centers through any State and more trained professionals to assess potential IP CTS users”); TEDPA Comments at 2 (“TEDPA recommends that the FCC establish as an option, a pilot program in which state equipment distribution programs receive federal funding to collect data and formulate recommendations to the FCC regarding consumer eligibility assessments, provider practices, and performance measures that would be useful to the FCC.”).

³⁹ See, e.g., CaptionCall Comments at 19-20 (“There is . . . no evidence to support the Commission’s suggestion that, due to improper incentives or relationships between providers and HHPs, HHPs are pressuring customers to request IP CTS.”); *id.* at 28 (“There is no reason for the Commission to believe that an HHP would risk violating his or her ethical requirements, as well as federal and state law, and potentially losing his or her license, by certifying under penalty of perjury that a patient needs captioning service, when in fact the patient does not.”); Consumer Groups’ Comments at 11 (“Despite proposing to replace the existing system with a more burdensome alternative, the Commission cites little specific evidence to link current eligibility requirements to an increase in unnecessary use of IP CTS.”); Hamilton Relay Comments at 19 (“audiologists have been effective in screening users, and should continue to be involved in certifying users based on their professional expertise”).

⁴⁰ See, e.g., Further Notice ¶ 117.

CTS devices or services to their clients who do not need them or who would not benefit from them.”⁴¹ Similarly, the American Academy of Audiology finds that “audiologists typically receive no compensation, direct or indirect, for IP CTS authorizations.”⁴² Accordingly, CaptionCall’s finding that “HHPs actually refer a very small proportion of their patients to providers of IP CTS” is hardly surprising.⁴³

In short, as the International Hearing Society succinctly notes, the “importance of utilizing an objective methodology for certifying IP CTS need, the expertise and availability of such testing by licensed hearing care professionals in a convenient setting, and the minimal cost burden (\$0 burden to state taxpayers)” clearly militate in favor of permitting HHPs to continue to undertake user assessments.⁴⁴

B. The Commission Should Not Unduly Narrow the Scope of User Assessments

The record clearly reflects that the Commission should not limit assessments of user need to the “consumer’s ability to hear and understand speech over the telephone and . . . whether the consumer’s communication needs can be met by other assistive technologies.”⁴⁵ To the

⁴¹ ASHA Comments at 2 (further indicating that “ASHA is not aware of any circumstances where audiologists are receiving ‘kick-backs’ or incentives for certifying individuals for IP CTS” and that such an arrangement “would be a violation of several provisions of ASHA’s Code of Ethics”).

⁴² American Academy of Audiology Comments at 4; *id.* at 2 (rejecting the conclusion that the “growth in IP CTS usage ‘has been exacerbated by the failure of user assessments to be sufficiently complete and objective’”).

⁴³ CaptionCall Comments at 20 (further finding that, “in 2018, CaptionCall received, on average, less than one certification every month from HHPs who certified users”).

⁴⁴ International Hearing Society Comments at 4.

⁴⁵ Further Notice ¶ 119. While a limited number of commenting parties assert that some individuals may obtain access to IP CTS when an amplified phone would suffice, their arguments are overstated. For example, Missouri Assistive Technology implies that a male consumer with “very limited, understandable speech . . . who relies on tactile sign language” improperly received an IP CTS device. Missouri Assistive Technology Comments at 4. The 880iB Braille CapTel device, however, is designed to benefit users who are blind or have low

contrary, such restrictive assessments would ignore the “complex nature of the factors affecting phone communication.”⁴⁶ Instead, the Commission should continue to “defer[] to the audiologist’s expertise in the considerations for IP CTS authorization.”⁴⁷ As the International Hearing Society indicates, this approach “allows the professional the flexibility to use his/her clinical judgment for clients/patients with unique communicative and/or cognitive abilities and challenges who may not meet the thresholds that typically define IP CTS need but require IP CTS to effectively communicate using the telephone.”⁴⁸

C. The Commission Should Not Impose Unnecessary Biennial User Renewal Requirements

The record makes clear that requiring users to certify their ongoing eligibility for IP CTS every two years would be nonsensical. As the Kansas Corporation Commission indicates, the “majority of applicants will not regain their hearing once they lose it.”⁴⁹ As a result, “a two year

vision, permitting users to either read a large screen that is capable of displaying words in extra-large font sizes or use tactile Braille by connecting a Braille keyboard to the CapTel device. If the user can read the large print captions or understand Braille, and is speaking to someone who understands his or her voice, then the user is getting “functionally equivalent” service. If the CapTel device meets the individual’s needs, it should not be up to someone else to decide that the person must rely on a different device or service even if they have “limited, understandable speech.” In addition, as CaptionCall indicates, it is “critical” that an individual can be certified “who needs captions *even for just some calls or some portions of call.*” CaptionCall Comments at 36.

⁴⁶ American Academy of Audiology Comments at 4; *see also, e.g.*, CaptionCall Comments at 12 (“[T]he effects of hearing loss—and the appropriate treatments for different contexts—are highly complex.”).

⁴⁷ American Academy of Audiology Comments at 4; *see also, e.g.*, ASHA Comments at 3 (“The audiologist’s role should be inclusive of the individualized approach . . . and not limited to a single test, assessment, or metric.”).

⁴⁸ International Hearing Society Comments at 2; *see also, e.g.*, CaptionCall Comments at 10 (“Studies demonstrate that captioning mitigates the increased cognitive difficulties of extracting meaning from spoken words for individuals with hearing loss, which is necessary to achieve ‘functional equivalence.’”).

⁴⁹ Kansas Corporation Commission Comments at 5; *see also, e.g.*, CaptionCall Comments at 54 (“Rarely, if ever, does a user who was eligible for IP CTS cease to need the service because

recertification period appears to put these particular applicants at an unfair disadvantage and unfairly penalizes this part of the disabled community.”⁵⁰

D. The Commission Should Not Mandate that Providers Disclose Per-Minute IP CTS Costs to Users

There simply is no reason for the Commission to require providers to inform new customers of the “per-minute cost of providing captioning on each call.”⁵¹ This information likely would be confusing to users. Moreover, as CaptionCall indicates, “this disclosure would be equivalent to mandating signs on disability-accessible ramps or bathrooms indicating how much they cost to construct: It risks creating additional stigma for individuals with disabilities and chilling eligible users from using a service they are statutorily entitled to use.”⁵²

V. THE COMMISSION SHOULD MORE APPROPRIATELY BALANCE THE BENEFITS AND BURDENS OF ITS PROPOSALS

As set forth above, it is clear that the Commission’s proposals would impose tremendous costs on individuals who qualify to receive IP CTS service. These costs are not offset by the speculative savings the Commission touts. For example, the Commission estimates potential savings of between \$14.2 and \$28.4 million in the first year from ensuring independent assessments of IP CTS user eligibility.⁵³ As multiple parties have argued, however, the Commission’s projected savings “are uncited and have no support in the record,”⁵⁴ particularly

his or her hearing *has improved*. Hearing loss almost always gets worse over time.”); Consumer Groups’ Comments at 26 (“Hearing loss generally does not get better as time progresses; it gets worse.”).

⁵⁰ Kansas Corporation Commission Comments at 5.

⁵¹ Further Notice ¶ 142.

⁵² CaptionCall Comments at 53.

⁵³ Further Notice ¶¶ 136-138.

⁵⁴ CaptionCall Comments at 21; *see also* Hamilton Relay Comments at 17 (“The figures being relied upon in the Further Notice are simply speculative and not the product of rational rulemaking.”).

given the record evidence that independent assessments already are working effectively.⁵⁵ As a result, relying on these purported savings to justify reform “would be entirely arbitrary even if the Commission were correct (and it is not) that there is *generally* a waste, fraud, and abuse problem in the IP CTS program.”⁵⁶

Instead of burdening legitimate IP CTS users while obtaining little or no savings to the TRS Fund, the Commission should focus on enforcing its existing rules to ensure that any actual abuses in the IP CTS program are identified and eliminated before adopting “sweeping industry changes that harm legitimate providers and users, and which may not actually remove the problem.”⁵⁷ CaptionCall correctly concludes that the Commission’s rules “already address many, if not all, of the concerns identified in the Further Notice regarding improper practices by HHPs and IP CTS providers.”⁵⁸ Moreover, a number of the rules adopted by the Commission have not even gone into effect. As Hamilton argues, it would be sensible to “allow those rules to go into effect, and for the Commission to measure their effectiveness, before adopting the additional rules proposed in the Further Notice, in order to avoid over-regulation of the industry, stifling of innovation, and the addition of unnecessary burdens to consumers.”⁵⁹

⁵⁵ See discussion *supra* at Section IV.A.

⁵⁶ CaptionCall Comments at 21.

⁵⁷ Hamilton Relay Comments at 18.

⁵⁸ CaptionCall Comments at 28.

⁵⁹ Hamilton Relay Comments at 23.

VI. THE COMMISSION SHOULD DEFER ITS CONSIDERATION OF THE ASR-RELATED CONCERNS RAISED IN THE FURTHER NOTICE

At various points in the Further Notice, the Commission seeks comment on issues concerning IP CTS offerings based solely on Automatic Speech Recognition (“ASR”) that, collectively, are intended to promote the use of that technology.⁶⁰ The fundamental problem with the Commission’s approach to the use of this ASR technology is that it has yet to address the most basic question that must be answered about any new TRS technology: whether the service is capable of delivering an efficient relay service to individuals with communications disabilities in “a manner that is functionally equivalent” to communications services used by individuals without such disabilities.⁶¹ As Sprint and other parties point out, the questions posed in the Further Notice become relevant only after the Commission has ruled that an ASR-based IP CTS offering satisfies the statutory service quality benchmark.⁶²

The Consumer Groups, for example, note that by deferring to other proceedings the task of developing specific performance standards for evaluating ASR, the “Commission has put itself in the position of advancing a new technology without any type of framework, or even a timeline for implementing a framework, to evaluate the extent to which that technology satisfies the Section 225’s functional equivalency standard for quality.”⁶³ Similarly, they point out that

⁶⁰ See, e.g., Further Notice ¶¶ 96-100 (seeking comment on setting a compensation rate for ASR-based IP CTS calls); ¶¶ 152-53 (seeking comment on whether there are “unique challenges” associated with the use of fully automated ASR to relay calls to 911).

⁶¹ 47 U.S.C. §§ 225(a)(3), (b)(1).

⁶² ITTA’s assertion that “the Commission should incent providers to implement ASR” is also plainly premature. ITTA Comments at 18. That is a policy question that should be addressed only after the Commission has developed the quality and efficiency standards to determine which ASR-based IP CTS offerings meet the statute’s requirements.

⁶³ Consumer Groups’ Comments at 19. See also National Association for State Relay Administration Comments at 2 (indicating that the Commission needs to establish minimum

the Commission's request for comment on the role of ASR in handling 911 calls is premature because the Commission must first "ensure that IP CTS itself is a quality service, and that ASR matches the service provided by [Communications Assistants]." ⁶⁴

The Kansas Corporation Commission echoes that concern by emphasizing that it supports use of ASR-based IP CTS "if in fact it can be proven to handle TRS calls to a high enough level of quality to be equivalent with utilizing" a Communications Assistant. ⁶⁵ The Commission cannot make that determination without adopting substantive standards based on record evidence for assessing ASR service quality and efficiency. The Commission, therefore, should defer further consideration of the ASR-related issues raised in the Further Notice until it has completed this ongoing process and can identify the ASR-based IP CTS offerings that are eligible for TRS support.

service standards that are applicable to IP CTS offerings that are provided through ASR technology).

⁶⁴ Consumer Groups' Comments at 27.

⁶⁵ Kansas Corporation Commission Comments at 11.

VII. CONCLUSION

For the foregoing reasons, the Commission should avoid taking unnecessary actions that would undermine the availability of functionally equivalent service to the growing, vulnerable population of legitimate IP CTS users.

Respectfully submitted,

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